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V. Hoke
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Art Unit 143
070,503

Jean Y. Chenard

Before the Board of Appeals

486-14

Ostrolenk, Faber, Gerb, & Soffen for Appellants

Examiner's Answer

This is an appeal from the final rejection of claims 14-28. No claim has been allowed. A correct copy of the appealed claims appears on pages 4-6 of the Appeal Brief

The Invention

Polyvinylchloride compositions are rendered more thermally stable by the incorporation of any metal-containing stabilizer and any organic carboxylic acid ester having a mercapto group, -SH, directly attached to a carbon atom in the alcohol derived portion of the ester. Representative of the metal-containing stabilizer is calcium stearate, organo tin stabilizers and antimony trimercaptides, while mercapto ethanol esterified fatty acids typify the latter ingredient.

The Reference

3,928,285 Gough et al December 23, 1975

Gough discloses stabilizer compositions containing both an organotin borate and organic thiols for polyvinyl chloride. Applicants' mercapto esters are exemplary of the latter class of materials. And reference's organotin borate encompasses applicants' broad metal-containing stabilizer component as well. As to the optional presence of calcium stearate, Gough relates in Examples 7-12 that polyvinyl chloride compositons prior to compounding with his stabilizer system as defined above may contain calcium stearate in the amount of 1% by weight the composition, which range is within applicants' purview to wit see claim 27.

The Rejection

I. Claims 14-18, 21-24 and 26-28 stand rejected as fully met by Gough et al under 35 USC 102(b) for the reasons stated in paragraph 12 of the final rejection paper No. 4 dated July 8, 1980.

II. Claims 14-28 are rejected as obvious over Gough et al under 35 USC 103 for the reason stated in paragraph 13 of the final rejection.

Applicant contends that his claimed recitation "metal containing stabilizer" excludes Gough's requisite

organotin borate but does not state the basis for this conclusion. This position is clearly untenable since the organotin borate is a "metal-containing stabilizer" according to Gough. The further assertion that claim 17 excludes the organotin borate is inaccurate since the claim merely defines the metal portion of the molecule and this moiety may be tin or calcium. Indeed all claims encompass calcium stearate as the metal-containing stabilizer and as stated supra this component is present in all of Gough's formulations. Applicant's claims encompass the conjoint use of an organotin borate and calcium stearate since all claims recite the broad comprising terminology or its equivalent containing terminology as an introduction to the recitation of the ingredients constituting the composition or the materials which are admixed according to the method claims. Since the claims do not exclude the borate via "consisting of" terminology applicant is in no position to urge that the present compositions claims patentably define over Gough.

As to the purported difficulty in determining inter alia four distinct classes of mercapto compounds within Gough's genus, applicant's particular derivatives, none is perceived by the examiner. All the stabilized compositions represented in Tables I and II contain an ester within applicant's purview as well as four out of the seven mercapto compounds in the examples

of Table III. Accordingly the traversal that Gough offers no greater specificity than aliphatic or aromatic is not only erroneous but is by virtue of applicant's own broader definition a defect in their characterization of the instant component also.

The final rejection is considered meritorious of being sustained for the reasons stated therein.

VHOKE:rpl

(703) 557-3804

04-23-81

V P Hoke

VERONICA P. HOKE
PRIMARY EXAMINER
ART UNIT 143

Ostrolenk, Faber, Gerb & Suffen
260 Madison Ave.
New York, NY 10016